

1973 November 6

[STAVRINIDES, J.]

IN THE MATTER OF ARTICLE 146 OF THE CONSTITUTION

THE MINOR CHRISTOS MICHAEL, THROUGH HIS FATHER
AND NATURAL GUARDIAN SOFOCLES MICHAEL,

Applicant,

and

THE REPUBLIC OF CYPRUS, THROUGH
THE MINISTRY OF EDUCATION;

Respondent.

(Case No. 27/73).

5 *Administrative Law—Unlawful administrative acts—Revocation—
Principles applicable—Registration of pupil in the third form
instead of in the second by mistake of the school staff—Time that
elapsed since registration not such as to preclude respondent from
revoking it—Revocation of registration made lawfully.*

10 The applicant attended the second form of the First Limassol
Gymnasium in the school year 1971–72 at the end of which he
failed to pass the mathematics examination and was referred for
re-examination in the following September. He was re-
examined and, having failed again, had to repeat the second form.
Through some mistake on the school side he was admitted to the
third form. The mistake was discovered some time before the
19th of the following December when the School Head called
15 the applicant's father and told him of it and further informed
him that the applicant had to be moved back to the second form.
Hence this recourse.

20 *Held*, that unlawful administrative acts which have created
a state of things favourable to the citizen are revocable but not
after the lapse of a long period of time, but within a reasonable
time, unless that unlawful administrative act was brought about
by fraudulent action of the person benefited by it; that what
period of time is reasonable depends on the special circumstances
of each case; that the evidence clearly established that the admis-

sion of the applicant to the third form of the new gymnasium was due to a mistake on the part of the school staff; that the time that elapsed since the registration is not such as to preclude the respondent from revoking it; that, therefore, the respondent could revoke the registration; and that, accordingly, the application must be dismissed. 5

Application dismissed.

Recourse.

Recourse against the decision of the respondent whereby the applicant was placed in the second form of the Fourth Gymnasium of Limassol, instead of the third form, to which he had been promoted through some mistake. 10

L. N. Clerides, for the applicant.

G. C. Tornaritis, for the respondent.

Cur. adv. vult. 15

STAVRINIDES J. read the following judgment. In the school year 1971-72 the applicant attended the second form of the First Limassol Gymnasium. Beginning from the next school year a new gymnasium, to be known as the Fourth Limassol Gymnasium, was to function in that town, and the applicant was among the pupils who, if they were to continue their gymnasium schooling, had to attend the new school. Having failed to pass the mathematics examination at the end of the school year he was referred for re-examination in the following September. He was re-examined and, having failed again, had to repeat the second form. Through some mistake on the school side he was admitted to the third form. The mistake was not discovered until the following December—some time before the 19th; and on that date the School Head called the pupil's father and told him of it, adding that the boy had to be moved back to the second form. He was so moved, and this application is for a 20 25 30

“Declaration of the Court that the act and/or decision of the respondents and/or their organs or representatives whereby the applicant is placed in the second form of the Fourth Gymnasium of Limassol from January 13, 1973, instead of the third, to which he had been promoted, and which he had attended down to the above date, is null and void and of no legal effect whatever.” 35

The law of the subject is clearly stated in several books on

administrative law. I propose referring to only one, Stasinopoulos's Law of Administrative Disputes, where, at p. 230, there is this:

5 " The lawful administrative acts which have given rise to
rights in the citizen are not revocable. The unlawful
administrative acts which have created a state of things
favourable to the citizen are revocable but not after the
lapse of a long period of time, but within a reasonable time,
10 unless that unlawful administrative act was brought about
by fraudulent action of the person benefited by it, in which
case because of such fraud the act is revocable no matter
how long a period has elapsed."

This must be read together with the following passage from pp. 232, 233:

15 " What period of time is reasonable cannot, of course, be
determined by a single principle, because its length varies
and depends on the special circumstances of each case.....
But for lapse of a reasonable time to create a situation
precluding the revocation of an unlawful administrative
20 act one more condition is necessary, viz. (4) good faith on
the part of the person benefited. Good faith exists when
the citizen has not contributed by an act or omission of
his to the doing of the unlawful act, particularly when he
did not pursue any fraudulent course of action which misled
25 the administration into doing the act. A case of fraudulent
course of action on the part of the citizen which influenced
the doing of the act is, for instance, the production by him
of false certificates regarding his qualifications, or an inaccurate
statement about them or even a simple omission to
30 state facts or particulars which, had the administration
known them, it would not have appointed him.

If there has been any such culpable action on part of the
citizen then the condition of good faith is non-existent
and for this reason the act is revocable no matter how long
35 a period of time has elapsed since it was done. Thus the
case-law of the Council of State has held that if a child has
been admitted as a pupil in a gymnasium on the basis of a
false statement by him that he is qualified in respect of
previous studies, his admission does not create for him,

in view of his bad faith, a claim that it should remain in force, and it is always revocable, both itself and also all subsequent administrative acts based on it, no matter how long a period of time has elapsed since they were done."

No evidence has been adduced on behalf of the applicant. 5
On the other side four witnesses were called—Mr. P. Georghiou, the Head of the First Limassol Gymnasium, Mr. D. Markaris, a clerk employed there since 1946, Mr. A. Vassiliades, a clerk in the First Limassol Gymnasium for twelve years who on the establishment of the Fourth Gymnasium was transferred 10 there, and Mrs. Ioli Mousteri, a teacher in the new school. All were absolutely honest and reliable witnesses. It is unnecessary to go into details. Their evidence clearly establishes that the admission of the applicant to the second form of the new gymnasium was due to a mistake on the part of the staff of that school 15 and that this was brought about by the applicant's father applying for his registration in the third form. Nor is the time that elapsed since the registration such as to preclude the respondent from revoking it.

Accordingly the application fails and is dismissed. Each 20 party to bear own costs.

Application dismissed. Order for costs as above.